

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

SEAN SNYDER,

CASE NO. 19-6132 RJB

Plaintiff,

## ORDER ON DEFENDANTS' MOTION TO DISMISS

STX TECHNOLOGIES, LTD., a corporation, MOSHE HOEGEG, DOES 1-10,

## Defendants.

THIS MATTER comes before the Court on the STX Technologies, Ltd. (“Stx”) and Moshe Hogeg’s Renewed Motion to Dismiss for Lack of Personal Jurisdiction and Alternatively for Failure to State a Claim (Dkt. 55) and motion to strike (Dkt. 63). The Court has considered the pleadings filed regarding the motions and the remaining file.

On November 25, 2019, the Plaintiff filed this case, *pro se*, asserted claims against the Defendants in connection with the Plaintiff’s alleged purchase of Stx “Tokens” (cryptocurrency tokens). Dkt. 1. Defendant Stx is alleged to be a corporation registered in Gibraltar and Defendant Moshe Hogeg is alleged to reside in Israel. *Id.*

1       The Defendants now move to dismiss the case for lack of specific personal jurisdiction  
2 over them for the remaining claims and for failure to state a claim. Dkt. 55. For the reasons  
3 provided, the Defendants' motion to dismiss for lack of specific personal jurisdiction should be  
4 renoted for a hearing pursuant to Fed. R. Civ. P. 12(i). The Defendants' motion to dismiss for  
5 failure to state a claim is well taken. Plaintiff should be granted leave to file a motion for leave  
6 to amend his Amended Complaint.

7           **I. PROCEDURAL HISTORY AND BACKGROUND FACTS**

8       On August 31, 2020, the undersigned granted, in part, the Defendants' motion to dismiss  
9 for lack of personal jurisdiction, holding that the Court did not have general jurisdiction over the  
10 Defendants or specific jurisdiction over the Defendants for Plaintiff's claims that sounded in  
11 contract. Dkt. 48. The Plaintiff's claims that sounded in contract (third party breach of contract  
12 and promissory estoppel) were dismissed. *Id.* The Defendants' motion to dismiss for lack of  
13 specific personal jurisdiction over Plaintiff's claims that sound in tort (fraudulent inducement,  
14 negligent misrepresentation, and violations of the Securities Act of Washington, RCW 21.20, *et*  
15 *seq.*) was denied without prejudice. *Id.* The undersigned noted that "it maybe appropriate for a  
16 jurisdictional hearing, pursuant to Fed. R. Civ. P. 12(i), to occur before trial." *Id.* The facts and  
17 procedural history are in that order and are adopted here. *Id.*

18       The Defendants now move for dismissal of the case for lack of specific personal  
19 jurisdiction over the Plaintiff's claims that sound in tort and for failure to state a claim. Dkt. 55.  
20 The Defendants move for a hearing, pursuant to Rule 12(i), if the Court finds there are issues of  
21 fact as to whether there is personal jurisdiction over them. *Id.* In support of their motion to  
22 dismiss, the Defendants filed supplemental declarations of the Stx Director, Hanita Ezra and Mr.

1 Hogeg. Dkts. 55-1 and 55-2. The Defendants also move for dismissal of the Amended  
2 Complaint for failure to state a claim. *Id.*

3 The Plaintiff timely filed a response and argued that the Court had already determined  
4 that the case should not be dismissed for lack of jurisdiction and argues that he has properly  
5 stated claims for relief. Dkt. 61. The Plaintiff then filed additional briefing after the November  
6 16, 2020 deadline and an additional declaration. Dkt. 62.

7 The Defendants move to strike the Plaintiff's late filed additional briefing and  
8 declaration. Dkt. 63. They argue that their motion to dismiss should be granted. *Id.*

9 After the Defendants' reply was filed, a notice of appearance for the Plaintiff was  
10 entered. Dkt. 64.

## 11 II. DISCUSSION

### 12 A. DEFENDANTS' MOTION TO STRIKE

13 In the interest of fully and fairly considering all issues in the case, the Defendants'  
14 motion to strike the Plaintiff's additional briefing and declaration (Dkt. 63) should be denied.

### 15 B. MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION – FED. 16 R. Civ. P. 12(b)(2)

17 Fed. R. Civ. P. 12 (b)(2) governs the dismissal of an action based on lack of personal  
18 jurisdiction. Where no applicable federal statute addresses the issue, a court's personal  
19 jurisdiction analysis begins with the "long-arm" statute of the state in which the court sits.

20 *Glencore Grain Rotterdam B.V. v. Shivnath Rai Harnarain Co.*, 284 F.3d 1114, 1123 (9th Cir.  
21 2002). Washington's long-arm statute extends the court's personal jurisdiction to the broadest  
22 reach that the United States Constitution permits. *Byron Nelson Co. v. Orchard Management  
23 Corp.*, 95 Wn. App. 462, 465 (1999). Because Washington's long-arm jurisdictional statute is  
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1 coextensive with federal due process requirements, the jurisdictional analysis under state law and  
2 federal due process are the same. *Schwarzenegger*, 374 F.3d 797, 800–01 (9<sup>th</sup> Cir.2004).

3 To exercise personal jurisdiction over a nonresident defendant under federal law, that  
4 defendant must have at least “minimum contacts” with the relevant forum state such that  
5 exercising jurisdiction “does not offend traditional notions of fair play and substantial justice.”  
6 *Schwarzenegger*, 374 F.3d at 801, (citing *International Shoe v. Washington*, 326 U.S. 310, 316  
7 (1945). In determining whether a defendant had minimum contacts, courts focus on the  
8 relationship among the defendant, the forum, and the litigation. *Shaffer v. Heitner*, 433 U.S. 186  
9 (1977). Personal jurisdiction exists in two forms, general and specific. *Dole Food Co. v. Watts*,  
10 303 F.3d 1104, 1111 (9th Cir. 2002).

11 This Court has already held that it does not have general personal jurisdiction over the  
12 Defendants or specific personal jurisdiction over the Defendants for the contract based claims.  
13 Accordingly, the issue presented here is whether the Court has specific personal jurisdiction over  
14 the Defendants for the Plaintiff’s claims that sound in tort.

15 After reviewing the Amended Complaint and the parties’ submissions in support and  
16 opposition of the motion, the undersigned concludes that there are issues of fact as to whether  
17 this Court has specific personal jurisdiction over the Defendants for the Plaintiff’s remaining  
18 claims which sound in tort (fraudulent inducement, negligent misrepresentation, and violations  
19 of the Securities Act of Washington, RCW 21.20, *et. seq.*). In this circumstance, the Defendants  
20 move for an evidentiary hearing pursuant to Fed. R. Civ. P. 12(i). Dkt. 55.

21 Under Fed. R. Civ. P. 12(i), where, as here, “a party so moves, any defense listed in Rule  
22 12(b)(1)-(7) . . . must be heard and decided before trial unless the court orders a deferral until  
23 trial.”

1       The Defendants' motion for a fact finding hearing on whether the Court has specific  
2 jurisdiction over the Defendants (Dkt. 55) should be granted. The hearing should be set as soon  
3 as practicable. Such a hearing will take place over the Court's virtual hearing platform. By  
4 December 4, 2020, the parties should inform the Court of the anticipated length of the hearing,  
5 and when counsel can be ready. It should be given a high priority. This case has lingered for  
6 over a year.

7                   **C. MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM**

8       The Defendants also move for dismissal of the Amended Complaint pursuant to Fed. R.  
9 Civ. P. 12(b)(6), for failure to state a claim. Dkt. 55.

10       Fed. R. Civ. P. 12(b)(6) motions to dismiss may be based on either the lack of a  
11 cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory.  
12 *Balistreri v. Pacifica Police Department*, 901 F.2d 696, 699 (9<sup>th</sup> Cir. 1990). Material allegations  
13 are taken as admitted and the complaint is construed in the plaintiff's favor. *Keniston v. Roberts*,  
14 717 F.2d 1295 (9<sup>th</sup> Cir. 1983). “While a complaint attacked by a Rule 12(b)(6) motion to dismiss  
15 does not need detailed factual allegations, a plaintiff's obligation to provide the grounds of his  
16 entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the  
17 elements of a cause of action will not do.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 554-55  
18 (2007) (internal citations omitted). “Factual allegations must be enough to raise a right to relief  
19 above the speculative level, on the assumption that all the allegations in the complaint are true  
20 (even if doubtful in fact).” *Id.* at 555. The complaint must allege “enough facts to state a claim  
21 to relief that is plausible on its face.” *Id.* at 547.

22       The Defendants' motion to dismiss the Amended Complaint for failure to state a claim is  
23 well taken. The Defendants properly point out that the Plaintiff's claims for fraudulent  
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1 inducement and violations of the Securities Act of Washington, RCW 21.20, *et. seq.* were not  
2 plead with sufficient particularity as required under Fed. R. Civ. P. 9. The Amended Complaint  
3 fails to identify the “time, place and substance” of the alleged misrepresentations that are the  
4 basis for his claims. Likewise, the Amended Complaint fails to identify the grounds for the  
5 Plaintiff’s negligent misrepresentation claims. The Amended Complaint contains vague  
6 assertions and conclusory statements of law. It is not sufficient.

7       The Plaintiff does not meaningfully respond to the Defendants’ arguments other than to  
8 argue that the Court has already denied this motion. The Court denied the Defendants’ prior  
9 motion to dismiss the Amended Complaint for failure to state a claim because the arguments  
10 were based on the Complaint (not the Amended Complaint). The Defendants’ renewed motion  
11 is based on the Amended Complaint.

12       “*A pro se* litigant must be given leave to amend his or her complaint unless it is  
13 absolutely clear that the deficiencies of the complaint could not be cured by amendment.” *Noll*  
14 *v. Carlson*, 809 F.2d 1446, 1448 (9th Cir. 1987).

15       When the Plaintiff filed his Amended Complaint, he was acting *pro se*. Although he is  
16 represented by counsel, he should be given an opportunity to file a motion for leave to file a  
17 second amended complaint, if he wishes, on or before **December 18, 2020**. Plaintiff must file a  
18 proposed second amended complaint with his motion, if any. Failure to file a motion for leave to  
19 file a second amended complaint with the proposed second amended complaint, may result in the  
20 granting of Defendants’ motion to dismiss for failure to state a claim (Dkt. 55). Plaintiff should  
21 note the motion for leave to file a second amended complaint, if any, in accord with Western  
22 District of Washington Rule of Civil Procedure 7; Defendants’ response, if any, and Plaintiff’s  
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1 reply, if any, should also be filed in accord with the Local Rules. Defendants' motion to dismiss  
2 for failure to state a claim should be renoted (Dkt. 55) to December 18, 2020.

3 **ORDER**

4 **IT IS ORDERED THAT:**

5 • STX Technologies, Ltd. and Moshe Hogeg's Renewed Motion to Dismiss for  
6 Lack of Personal Jurisdiction (Dkt. 55) **IS GRANTED**, to the extent it moves for  
7 a fact finding hearing, and **RENOTED** for consideration at the time of the  
8 hearing;

9 • By **December 4, 2020**, the parties should file a joint report, informing the Court  
10 of when the fact finding hearing on the Motion to Dismiss for Lack of Personal  
11 Jurisdiction can be heard; and

12 • Motion to Dismiss for Failure to State a Claim (Dkt. 55) **IS RENOTED to**  
13 **DECEMBER 18, 2020**;

14 • The deadline for the Plaintiff to file a motion for leave to file a second amended  
15 complaint and a proposed second amended complaint is **December 18, 2020**;  
16 failure to file a motion for leave to file a second amended complaint and proposed  
17 second amended complaint may result in dismissal of the case.

18 The Clerk is directed to send uncertified copies of this Order to all counsel of record and  
19 to any party appearing *pro se* at said party's last known address.

20 Dated this 24<sup>th</sup> day of November, 2020.

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23 ROBERT J. BRYAN  
United States District Judge  
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